IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2007

CORAM

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

Writ Petition No. 5674 of 2004

1.Vijaya
2. Meenakumari ... Petitioners.

Vs

The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 004. ... Respondent.

Prayer:- Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of the writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in his office reference No.61444/N5/2003 dated .12.2003 and signed on 7.1.2004, quash the same and direct the respondent to take the appeal filed by the petitioners on 12.12.2003 on file and dispose of the same on merits within the time that may be fixed by this Court.

For Petitioners : Mr.P.Mani

For Respondent : Mr.C.Ramesh, AGP

O R D E R

The petitioners suffered an order passed by the Special Deputy Collector (Stamps) dated 11.8.2003 which was received by them on 14.10.2003 which is not in dispute. Appeal was filed before the respondent herein on 12.12.2003. The respondent rejected the appeal on the ground that (i) the same was presented after the expiry of 60 days from the date of passing of the order which is in violation of Rule 9(1) of the Tamil Nadu Stamps (Prevention of Under Valuation of Instruments) Rules; (ii) Rule 9(2) has not been complied with; (iii)Necessary proofs and notices have not been enclosed under Rule 9(3); and (iv) the relevant Court fee stamps have not been affixed.

2. In the present writ petition, the petitioner has challenged the condition No.1 of the impugned order.

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3. Learned counsel appearing for the petitioner submitted that the order was passed by the Special Collector(Stamps) on 11.8.2003, which was served on the petitioner only on 14.10.2003; that the said date is crucial; from that date onwards, the period of limitation started running and the appeal was filed on 12.12.2003, as such, taking into account the date of receipt, the appeal is in time, but the first respondent has rejected the appeal taking into account the date of passing of the order, without considering the fact when it was served on the petitioner, which is untenable in law.

4. In support of his contention, learned counsel for the petitioners has relied on the Division Bench Judgment in P.Ramadoss and another Vs. The Revenue Divisional Officer, Sivakasi (2004-2 L.W. 720) wherein it is stated as follows:

> "6.We find from the xerox copy of the order of the Revenue Divisional Officer, Sivakasi, though the orders are dated 18.11.2003, the Personal Assistant has signed the same on10.12.2003 and there is an endorsement made by the appellants for the receipt of the order on 23.12.2003. It is clear that if the date of signature of the Personal Assistant, namely, 10.12.2003 is taken into account, the appeals which were filed on 30.1.2004 are within time. As per Section 47A of the Indian Stamps Act, 1899 read with Rule 9 of the Tamil Nadu Stamps (Prevention of Under Valuation of Instruments) Rules, it is open to the appellants to file an appeal within two months from the date of the order. The 3rd respondent has proceeded on the basis of the date of the order is the date which the order bears. But, it is well settled that for the purpose of computing the limitation in preferring the appeals the date of service of the order is relevant and not the date which the order bears.

In Harish Chandra v. Dy.L.A. Officer (AIR 1961 S.C. 1500) the Supreme Court construed the expression, 'the date of the award' found in Section 18 (2) of the Land Acquisition Act 1894 to mean the date when the award is either communicated to the party or known to him either actually or constructively. The Supreme Court after considering earlier decisions held as under:-

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"A similar question arose before the Madras High Court in Annamalai Chetti v. Col.J.G.Cloete, ILR 6 Mad 189. Section 25 of the Madras Boundary Act XXVIII of 1860 limited the time within which a suit may be brought to set aside the decision of the settlement officer to two months from the date of the award, and so the question arose as to when the time would begin to run. The High Court held that the time can begin to run only from the date on which the decision is communicated to the parties. 'If there was any decision at all in the sense of the Act,' says the judgment, 'it could not date earlier than the date of the communication of it to the parties; otherwise they might be barred of their right of appeal without any knowledge of the decision having been passed'. Adopting the same principle a similar construction has been placed by the Madras High Court in Swaminathan v. Lakshmanan Chettiar, ILR 53 Mad 401: (AIR 1930 Mad 490) on the limitation provisions contained in Ss.73(1) and 77(1) of the Indian Registration Act XVI of 1908. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression 'within thirty days after the making of the order' used in the said sections means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned."

We, therefore, hold that the date of the order under Section 47-A for the purpose of deciding the limitation for filing appeals should be construed to mean the date of the service of the order. Hence, the date of order under Rule 9 of the said Rules shall be construed to mean the date of service of the order for the purpose of determining the time limit to prefer the appeals.

7. Moreover, in the instant case, the Personal Assistant has signed the order on 10.12.2003 for despatch to the appellants and the orders could not have been despatched prior to 10.12.2003. It is apparent that if 10.12.2003 is taken into account, the appeals preferred would be within time. The orders suffer from other infirmities, as the third respondent without giving an opportunity to explain as to how the

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appeals preferred were within time, rejected the appeals. In our view, it is not necessary to quash the orders on the ground that they were passed in violation of the principles of natural justice as we hold that the view entertained by the third respondent that the date of order means the date which the order bears and not the date of service of the order to determine the time limit for preferring the appeals is not legally sustainable. Hence, the orders of the 3rd respondent holding that the appeals preferred were beyond the period prescribed under Section 47-A of the Stamps Act are not sustainable. Consequently, the orders challenged in both the appeals are set aside and the matters are remitted back to the 3rd respondent to consider the same on merits.

5. Relying upon the said judgment, learned counsel for the petitioner submitted that two months time contemplated is reckoned from the date of service of the order not from the date of passing of the order and prayed for quashing of the same.

6. Heard Mr.Ramesh, learned Additional Government Pleader on the above contentions.

7. Rule 9(5) (a) of the Tamil Nadu Stamps (Prevention of Under Valuation of Instruments) Rules is as follows:

"An appeal under sub-section(10) of Section 47-A shall be preferred within two months from the date of final order passed under sub-section)5) or sub-section (6) of section 47-A:

Provided that in so far as an order passed under sub-section(6) of section 47-A between the commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1998 (Tamil Nadu Act 1 of 2000) and ending with 9th March 2001 is concerned, the said period of two months shall be reckoned from the 9th March 2001."

8. Considering the submissions of the learned counsel on both sides, the relevant provisions of Rule 9(5)(a) and following the decision of the Division Bench, this Court is of the view that the order passed by the Special Tahsildar Stamps was received by the petitioner on 14.10.2003, which fact is not in dispute, the appeal was filed on 12.12.2003, hence, the appeal is in time.

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9. In the result, condition No.1 of the impugned order passed by the respondent is quashed. Insofar as condition Nos.2,3 and 4 are concerned, learned counsel submitted that he is ready to comply with the same. Hence, the petitioners are permitted to re-present the papers after complying with condition Nos.2,3 and 4 within a period of two weeks from the date of receipt of a copy of this order to the respondent and on receipt of the same, the respondent is directed to consider the case on merits and pass orders in accordance with law as expeditiously as possible. The writ petition is ordered accordingly. No costs.

vjy/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 004.

+1 cc to Mr.P.Mani, Advocate Sr.No.35023.

+1 cc to the Government Pleader Sr.No.34990.

MRD(CO)
dcp/29.06.07

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